No. 440

HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1955

STANDARD COIL PRODUCTS CO., INC.,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

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ARTHUR RICHENTHAL,
Counsel for Petitioner.
Address:
122 East 42nd Street,
New York 17, New York.

Of Counsel:

ARTHUR RICHENTHAL,
AUSTIN D. GRAHAM,
DAVID ABRAMS.

LODER APPEAL PRESS, INC., 65 Duane Street, N. Y. C. WOrth 2-0689

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STANDARD COIL PRODUCTS CO., INC.,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

STANDARD COIL PRODUCTS CO., INC., prays that a writ of certiorari issue to review that part of the judgment of the United States Court of Appeals for the First Circuit, entered in the above entitled case on July 15, 1955, enforcing the order of the National Labor Relations Board disestablishing petitioner's Employee-Management Committee.

Citations to Opinions Below

The decision of the National Labor Relations Board, printed in Appendix C, *infra*, p. 30, is reported in 110 N. L. R. B. 412 (1954). The opinion of the Circuit Court of Appeals, printed in Appendix B, *infra*, p. 15, is reported in 224 F. 2d 465.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on July 15, 1955. R. 149a; p. 26, *infra*. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

Question Presented

May an employer of non-union employees in a mass production plant establish an Employee-Management Committee as an alternate channel of communication with its employees, where the Committee neither purports to act nor functions as a collective bargaining agency, and where the employer is found to have had no intention of interfering with the unionization of its plant?

Statute Involved

The statutory provisions involved are Sections 2(5), 7, 8(a)(1), 8(a)(2), 8(c) and 9(a) of the National Labor Relations Act, as amended by the Labor-Management Relations Act, 1947, 61 Stat. 136 *et seq.* (1947), 29 U. S. C. Sections 152(5), 157, 158(a)(1) and (2), 158(c), and 159(a). They are printed in Appendix A, *infra*, p. 13.

Statement

The National Labor Relations Board issued an unfair labor practice complaint against petitioner on December 4, 1953. (R. 58a) At the subsequent proceedings before the Trial Examiner, the parties stipulated the material facts as to the matters involved in this petition.[1] (R. 48a-57a)

Petitioner is an Illinois corporation engaged in the manufacture of electronic products and transacts business in commerce within the meaning of the National Labor Relations Act. (R. 60a-61a) Prior to June 23, 1953, all of

1. Most of the evidence in the record pertains to the discharge of an employee. The court below refused to enforce the Board's order reinstating the employee (Appendix B, *infra*, pp. 22-26) and this matter is not involved in this petition.

the Company's seven plants, located in different parts of the country, were unionized. (R. 61a-62a)

On June 23, 1953, the Company opened a new plant at North Dighton, Massachusetts. In order to provide a channel of communication between the management and the employees, the Company decided, several days prior to the opening of the North Dighton plant, to establish there an Employee-Management Committee as soon as the number of employees reached 600. (R. 62a) The Company anticipated that the Committee "would discuss suggestions for betterment of working conditions, safety, quality, propriety of dismissals, and other topics of mutual interest." (R. 65a-66a) These Committee discussions on problems presented by employees to their respective representatives would be referred to top management for its final decision. (R. 66a) The Company emphasized, however, that every employee could continue to confer directly with management on any matter. (R. 66a) Two employer representatives and six employees were to comprise the Committee. The employee members would be elected from six designated plant sections and compensated for time spent in carrying out Committee functions. (R. 51a, 66a) No constitution, by-laws, membership requirements, dues or authority to enter into any agreements were established in connection with the Committee. (R. 72a) On September 3, 1953, two days after the number of employees reached 600, the Company proceeded with the establishment of the Committee. (R. 62a, 65a) A few days later, employee representatives were chosen at elections held on Company time and property. (R. 67a)

It was also stipulated that the matters discussed at the first meeting of the Employee-Management Committee were of the same general nature as matters discussed at subsequent meetings. (R. 49a)

At this first Committee meeting on September 11th, the Personnel Manager stressed the need, especially in a new plant with new personnel, for the Committee to "concentrate on the establishment of a free flow of information" between employer and employees. (R. 68a) Employee members were urged to bring to the Personnel Manager's attention "any employee problem, question, or gripe," so that they could be promptly considered, and to treat these matters with respect "no matter how trivial * * * or silly." (R. 52a-53a, 57a) The meeting was mainly devoted to complaints and questions raised by employee members such as the waiting time involved in punching out; the delay in the opening of the cafeteria; the conduct of one male employee to a female employee; the vagaries of the lead girl on one production line; the overloading of work on a relief operator on another production line; the curtain to hide the girls' legs on a third production line; and the procedure for signing up for promotions on the bulletin board. (R. 52a-57a) One employee member also disclosed the complaint of some employees about the harm caused by other employees smoking in line while waiting to punch out. After a discussion it was agreed that smoking under these circumstances would no longer be permitted. (R. 53a) There was no consideration of individual or collective questions relating to wages, rates of pay or hours of employment. (R. 52a-57a, 68a)

On November 15, 1953, an affiliated union, which had begun organizational activity at the plant in late August, filed the unfair labor practice charge against the Company based on the Committee's activities. (R. 61a, 58a) No union had then been designated as the collective bargaining representative of the employees.

On the basis of these facts, the Trial Examiner concluded that the Committee was a "labor organization" within the meaning of Section 2(5) of the National Labor

Relations Act, as amended, Appendix A, *infra*, p. 13, and that the Company's domination of such Committee violated Sections 8(a)(2) and 8(a)(1) of the Act, Appendix A, *infra*, pp. 13-14. (R. 74a-75a)

The Trial Examiner found that the Committee had been "instituted under circumstances devoid of any other unfair labor practice" and that the Company had no intention of interfering with the rights guaranteed employees by the Act. (R. 74a, 101a) However, the Trial Examiner recommended disestablishing the Committee to remedy the "unfair labor practices." (R. 102a-104a) The Board adopted the Intermediate Report without opinion (R. 111a-115a; Appendix C, *infra*, pp. 30-33), and, on its petition, the Circuit Court enforced its order disestablishing the Committee. (R. 149a-151a; Appendix B, *infra*, pp. 26-27)

Reasons for Granting the Writ

1. *The decision of the First Circuit Court of Appeals conflicts with the decision of the Sixth Circuit Court of Appeals* in *N. L. R. B.* v. *Associated Machines, Inc.*, 219 F. 2d 433 (6th Cir. 1955).

The court below held that the language of Section 2(5) compelled it to rule that the instant Employer-Management Committee was a "labor organization," and that, accordingly, petitioner's support thereof was an unfair labor practice under Sections 8(a)(2) and 8(a)(1) of the Act. (Appendix B, *infra*, pp. 16-22)

On the other hand, the Sixth Circuit in the *Associated Machines* case, *supra*, refused to be bound by the literal wording of the statute and held that an employee representative committee that discusses with the employer employee complaints and working conditions was not a "labor organization," and that, accordingly, the em-

ployer's support thereof was not an unfair labor practice. (Appendix D, *infra*, pp. 34-41) The Sixth Circuit stated that Section 2(5) had reference only to:

> "major disputes in the labor field, to collective rather than individual or group complaints, and to chart the future of the employer-employee relationship rather than to correct the past or existing status of that relationship." (Appendix D, *infra*, p. 39)

The First Circuit attempted to distinguish the prior decision of the Sixth Circuit on the grounds that the instant Employer-Management Committee was concerned with "conditions of work" rather than matters of an individual and present nature. (Appendix B, *infra*, pp. 19-21) But the committees in the instant case and in the *Associated Machines* case both dealt exclusively with grievances and conditions of work of the same basic character and discussed matters having both an individual and a group interest. Thus in the *Associated Machines* case the committee discussed parking problems, time clocks and buzzer systems, safety shields, warm soda pop, and cigarette machines (Appendix F, *infra*, pp. 49-53), while in the instant case, the Committee dealt with cafeteria problems, time clocks, smoking, promotion procedure, and food costs. (Appendix E, *infra*, pp. 42-48) Moreover, the committee in the *Associated Machines* case did discuss and settle matters dealing with conditions of work, such as plant efficiency, new equipment, overtime work, and production problems (Appendix D, *infra*, p. 36; Appendix F, *infra*, pp. 49-53), matters which obviously would brand that committee a "labor organization" under the holding of the First Circuit.

2. *Clearly, the question involved is of importance in the administration of the National Labor Relations Act,*

and its settlement by this Court is plainly in the public interest.[2]

Many employee representative plans and grievance procedures in which employees participate have been established by employers of non-union workers.[3] The conflicting decisions of the Circuit Courts of Appeals maintain the uncertain legal status of such plans and grievance procedures, and affect the vital interests of every employee—and their employers—not covered by a collective bargaining agreement.

Practical industrial relations dictates that management make every intelligent effort to give prompt attention to employee complaints and problems. In mass-production plants, as in the instant case, which have more than a few employees, the purely mechanical difficulties involved and the shyness of employees accentuate the unlikelihood that individual employees will acquaint management with their "gripes" and questions. If management cannot provide a suitable mechanism to deal with these problems (at least until a new plant is organized by a union), the employer will be forced to sit by helplessly while plant efficiency deteriorates because of employee dissatisfaction and loss of interest in his work. Especially today when the shifting of industries into new areas and the displacement of old industries is proceeding at an unprecedented pace, more and more employers are facing this problem during the transition period between the opening of a new plant and any designation of a bargaining representative. Employers concerned with seeking means to promote more

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2. The National Labor Relations Board has so stated. Brief for National Labor Relations Board on Petition for Rehearing in *N. L. R. B.* v. *Associated Machines, Inc., supra*, p. 17.

3. See National Industrial Conference Board, Inc., Grievance Procedures in Non-Unionized Companies (Studies in Personnel Policy, No. 109) (1950).

satisfactory day-to-day relationships with their individual employees deserve this Court's judgment on the means legally available to them.

3. *The decision of the court below is erroneous and the decision of the Sixth Circuit Court of Appeals in N. L. R. B. v. Associated Machines, Inc., supra, is correct and applicable to the instant case.*

The Congress that enacted the National Labor Relations Act in 1935 was keenly aware of the many employee organizations initiated by employers to simulate genuine labor organizations. Sen. Rep. No. 573, 74th Cong., 1st Sess. (1935), p. 11. Yet it clearly intended to permit employers to establish labor-management committees, *Id.* at p. 10, and the courts concede that the Act does not outlaw all such committees. *N. L. R. B.* v. *Jas. H. Matthews & Co.*, 156 F. 2d 706, 708 (3rd Cir. 1946). But under the literal interpretation of Section 2(5) adopted by the First Circuit it is evident that no labor-management committee can avoid the impact of Section 8(a)(2), since even techniques of production, with which such committees are necessarily concerned, affect "conditions of work."

Moreover, the First Circuit's construction of Section 2(5) is inconsistent with the import of the 1947 Amendments made by the Labor-Management Relations Act, 61 Stat. 136 *et seq.*, commonly known as the Taft-Hartley Act. Section 7 of the Act now explicitly guarantees employees the right to refrain from engaging in collective activity. (Appendix A, *infra*, p. 13) This right, however, will be no more than an illusion if employers are not permitted to provide a realistic method to bring employee complaints to management's attention.

The Taft-Hartley Act also affirms an employer's right to communicate with his employees on matters of mutual interest. Section 8(c) of the Act (Appendix A, *infra*,

p. 14) concretely expresses the sense of Congress that the unfair labor practices specified in Section 8 should not be read so as to interfere with legitimate manifestations of an employer's interest in his relationship with his employees. If an employer may now freely suggest that his employees form a union or express his opposition to a union without committing an unfair labor practice, it is incongruous to hold that he may still not establish a labor-management committee, clearly labeled as such, and not identified in the minds of his employees with a collective bargaining agency.

Further, the proviso in Section 9 of the Act (Appendix A, p. 14, *infra*) guarantees individuals or groups of employees the right to confer and settle minor grievances with their employer, to the exclusion of their exclusive bargaining representative. Since the distinctive characteristic of the exclusive bargaining representative under Section 9 is confined to matters other than individual or group grievances of a minor nature, it seems reasonable to exclude from the characteristics of a "labor organization" in Section 2(5) similar minor matters. This expression of Congressional intent to give employees greater access to their employer has been held to permit employees to redress a reinstatement grievance through a minority union to the exclusion of the certified bargaining representative. *Douds* v. *Local 1250*, 173 F. 2d 764 (2d Cir. 1949). Nevertheless, the court below holds that it affords no legal basis for a committee in a non-union plant that enables production workers to voice through a spokesman their resentment over a lead girl's work technique or the smoking habits of other employees. Certainly Congress was no less concerned with non-union employees than with minority union employees when it enacted the Taft-Hartley Act. In answering these contentions, the court below stated:

> "(Petitioner's) argument has logic and force but nevertheless we are bound by the words of the statute."

The injustice to employers and non-union employees imposed by the First Circuit decision does not require legislative amendment; Congress, when it enacted the Taft-Hartley Law, clearly indicated its understanding that the present Act sanctions legitimate labor-management committees. The provision in the House bill which would have permitted employers to establish employee committees to deal with management even on wages and hours of work,[5] was omitted from the Act because it was thought that such committees were already clearly within its intended and implied meaning. In House Conference Report No. 510 on H. R. 3020, 80th Cong., 1st Sess. (1947), p. 45, the Hon. Fred Allan Hartley, Jr. emphasized the intent of Congress by stating as follows:

> "Section 8(a)(3) of the amended Labor Act in the House bill provided that nothing in the Act was to be construed as prohibiting an employer from forming or maintaining a committee of employees and discussing with it matters of mutual interest,

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5. Section 8(d)(3) of H. R. 3020, 80th Cong., 1st Sess., reprinted in I Legislative History of the Labor-Management Relations Act, 1947 (Gov't Prntg. Off. 1948), p. 183. The bill provided:

> "Section 8——
>
> (d) *Notwithstanding any other provision of this section,* the following shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act:
>
> (3) Forming or maintaining by an employer of a committee of employees and discussing with it matters of mutual interest, including grievances, wages, hours of employment, and other working conditions, if the Board has not certified or the employer has not recognized a representative as their representative under Section 9."

> if the employees did not have a bargaining representative. This provision is omitted from the conference agreement since the Act by its terms permits individual employees and groups of employees to meet with the employer, and section 9(a) of the conference agreement permits employers to answer their grievances."

Thus the Sixth Circuit in *N. L. R. B.* v. *Associated Machines, supra,* held that Section 2(5) applies only to organizations which profess to or deal with employers on matters such as wages, rates of pay, and hours of work. (Appendix D, *infra,* p. 39) This construction of the statute is consistent both with the purpose of the "company union features" of the Act and the decisions of this Court. Section 8(a)(2) was designed to eliminate organizations initiated by employers to discriminate against outside unions and organizations which professed to or actually engaged in collective bargaining. Sen. Rep. No. 573, 74th Cong., 1st Sess. (1935), p. 10. And in *N. L. R. B.* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 271 (1938), this Court held that employees are prevented from exercising the rights guaranteed by Section 7 when the employee organization is used by the employer to induce the mistaken belief that it affords an agency for collective bargaining.

In the instant case, the Trial Examiner found that the Committee was not initiated to prevent organization of the Company's employees (R. 101a), and the Committee did not hold itself out to its employees as a "labor organization" which would engage in bargaining on their behalf.[4] Nor did the instant Employee-Management Committee deal with matters commonly associated with the subjects of collective bargaining. (See Appendix E, *infra,* pp. 43-48)

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4. In fact, its very label as an "Employee-Management Committee" was less likely to mislead employees than the "Associated Machines Committee" in *N. L. R. B.* v. *Associated Machines, Inc., supra.*

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ARTHUR RICHENTHAL,
Counsel for Petitioner.

September 21, 1955.

Of Counsel:

ARTHUR RICHENTHAL,
AUSTIN D. GRAHAM,
DAVID ABRAMS.

APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended, (61 Stat. 136 [1947], 29 U. S. C. Sections 151 *et seq.*), are as follows:

Definitions

Sec. 2. When used in this Act—

* * * * *

(5) the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Unfair Labor Practices

Sec. 8(a). It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

* * * * *

(c) The expressing of any views, argument, or opinion, or the dissemination whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

REPRESENTATIVES AND ELECTIONS

Sec. 9(a). Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purpose, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 4920.

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

v.

STANDARD COIL PRODUCTS CO. INC.,
RESPONDENT.

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

Before MAGRUDER, *Chief Judge*, and WOODBURY and HARTIGAN, *Circuit Judges*.

Ruth V. Reel, Attorney, with whom *David P. Findling*, Associate General Counsel, *Marcel Mallet-Prevost*, Assistant General Counsel, and *Samuel M. Singer*, Attorney, were on brief, for petitioner.

Stanley Geller, with whom *Arthur Richenthal* was on brief, for respondent.

Appendix B

OPINION OF THE COURT.

July 15, 1955.

HARTIGAN, *Circuit Judge.* This is a petition by the National Labor Relations Board seeking enforcement of its order of October 20, 1954 which order, adopting the findings of the Trial Examiner, ordered the respondent, Standard Coil Products Co., Inc., a manufacturer of television set tuners, to cease and desist from certain unfair labor practices. The Board found that the respondent had violated Secs. 8(a)(1) and 8(a)(2) of the National Labor Relations Act, 61 Stat. 136, 29 U.S.C. § 151 et seq., when it initiated and assisted an Employee-Management Committee at its plant in North Dighton, Massachusetts, and had also violated Secs. 8(a)(1) and 8(a)(3) of the Act through its discriminatory discharge of John C. Martins who had been employed as an analyzer at the North Dighton plant.

The entire evidence relating to the Employee-Management Committee appears in the record and consists of a stipulation of certain facts, a copy of the announcement made to the respondent's employees concerning the creation of the Committee, a copy of an announcement made over the respondent's public address system and a copy of the minutes of the first meeting of the Committee.

It appears from this evidence that operations began at respondent's North Dighton plant on June 23, 1953, but that prior to this, on June 18, 1953, it had been decided by certain of the respondent's officials to form an Employee-Management Committee as soon as the number of employees reached 600. In August, 1953 the International Brotherhood of Electrical Workers, A.F.L. began an attempt to organize the plant. On September 1, 1953, the number of employees reached 600, and two days thereafter

there was posted on the respondent's bulletin board a notice stating that an Employee-Management Committee would be established and that "The basic objective of this Committee to be the creation of a team, that in its joint efforts, will be of benefit to all concerned, and give you a voice in your job security * * *. It is anticipated that such Committee will probably discuss suggestions for betterment of working conditions, safety, quality, propriety of dismissals, and other topics of mutual interest." The Committee was to be made up of representatives elected by each section, the respondent's personnel manager and an employee of the personnel manager. This notice also stated that each employee could discuss his "employee-management problems" with his representative on the Committee who then in turn could take up the matter with the other members of the Committee at a Committee meeting. The Committee members would be compensated by the respondent for any time they spent on Committee functions.

The first meeting of the Employee-Management Committee was held on September 11, 1953. According to the minutes it was agreed that the main initial purpose of this Committee would be to establish a free flow of information between the employees and management. It was also decided that employees should not be permitted to smoke while waiting in line to punch out, that the possibility of installing another time clock should be investigated and that a study should be made in order to obtain some means of identfying each employee. The opening of a plant cafeteria and promotional procedure were also discussed as was the conduct of employees toward each other. The personnel manager was questioned about a union and he, not directly answering this question, stated that the respondent was attempting to run a plant where people would like to work and this policy would be followed irre-

spective of the presence of a union but that what could be done in the future depended in large part upon the cooperation of the employees in producing a quality tuner at competitive prices. Several employee representatives then expressed more or less anti-union opinions. The other points discussed at this meeting were the necessity of a curtain under a production line, the failure of an employee to follow the instructions of a supervisor and the overloading of work on a relief operator. It was stipulated that at the subsequent meeting of the Employee-Management Committee the topics of discussion were of the same general nature as at the first meeting.

The Board found that the existence of this Employee-Management Committee was an unfair labor practice in violation of Sec. 8(a)(2) of the Act which is as follows:

> "(a) It shall be an unfair labor practice for an employer—
>
> * * * * *
>
> "(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it * * *."

There is no doubt that the respondent dominated the Employee-Management Committee. However, respondent strongly contends that its Employee-Management Committee was not a "labor organization" under Sec. 2(5) of the Act which provides as follows:

> "Sec. 2. When used in this Act—
>
> * * * * *
>
> "(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole

or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

The courts have tended to construe broadly this definition of "labor organization". In *National Labor Rel. Bd.* v. *Stow Manufacturing Co.*, 217 F. 2d 900 (2 Cir. 1954), cert. denied 348 U.S. 964 (1954), it was held that the conducting of meetings of employees by the employer's president at which he made a speech and conducted a question and answer period constituted a "labor organization" under the Act. The Employee-Management Committee in the instant case certainly possesses more of the characteristics of a "labor organization" than did "The Monthly Meetings of All Departments" in the *Stow Manufacturing Co.* case and is substantially similar to the Advisory, Safety, Grievance and Benefit Committees involved in *National Labor Relations Board* v. *General Shoe Corp.*, 192 F. 2d 504 (6 Cir. 1951), cert. denied 343 U.S. 904 (1952), the "Open Door Committee" in *National Labor Rel. Bd.* v. *Saxe-Glassman Shoe Corp.*, 201 F. 2d 238 (1 Cir. 1953), the Employee Representative Group and Committees in *National Labor Relations Bd.* v. *Sharples Chemicals*, 209 F. 2d 645 (6 Cir. 1954), and the Advisory Committee in *Indiana Metal Products Corp.* v. *National Labor Rel. Bd.*, 202 F. 2d 613 (7 Cir. 1953). In all these cases the employee organization was found to be a "labor organization" under the Act. However, the Sixth Circuit which broadly interpreted the statutory definition in the *General Shoe* and *Sharples Chemicals* cases, *supra*, has recently held in *National Labor Relations Bd.* v. *Associated Machines*, 219 F. 2d 433 (1955) that an employee organization entitled the Associated Machines, Inc. Committee was not a labor organization within the meaning of the Act. This Committee

was composed of the employer's general manager, who presided at the Committee meetings, and four employees elected by their fellow workers. Topics relating to production, plant efficiency, new equipment and other problems of mutual interest were discussed at the meetings of this Committee. The Committee had been organized principally in order that the management could be informed of the employees' recommendations and suggestions and could discuss with the employees any grievances that they might have. The court held that the Committee did not deal with the employer "concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work" and was therefore not a labor organization within the meaning of the statute. It was stated at p. 437 that the term "grievances" in Sec. 2(5) of the Act was used to refer to "major disputes in the labor field, to collective rather than individual or group complaints, and to chart the future of the employer-employee relationship rather than to correct the past or existing status of that relationship" and that grievances in this sense had not been discussed by the Associated Machines, Inc. Committee. The *General Shoe Corporation* and *Sharples Chemicals* cases were distinguished on the ground that in those cases wages, rates of pay, hours of employment, and conditions of work had been discussed whereas in the *Associated Machines, Inc.* case "such discussion as was had relating to working conditions involved individual rather than collective complaints and the request of the Committee for a parking lot, not available on company property, invoked no aspect of 'working conditions'."

In the instant case it is not necessary for us to distinguish between major grievances and minor grievances. It is evident that, applying even the standards of the *Associated Machine* case, the decision of the respondent's

Employee-Management Committee with regard to the prohibition of smoking while waiting to punch out and its discussions of a cafeteria, promotion procedure, and a second time clock related to the future of the employer and employee relationship and to matters which had a collective rather than an individual interest. Thus we do not have to decide whether or not we accept the reasoning of the ***Associated Machine*** case as it is clear in the instant case that the Employee-Management Committee dealt with the respondent, if not on grievances, at least concerning "conditions of work".

The respondent has advanced the contention that to cause the disestablishment of its Employee-Management Committee would prevent it from legitimately communicating with its employees under Sec. 8(c) of the Act[1] and would also as a practical matter prevent its employees from effectively exercising their rights under Sec. 9(a).[2]

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1 "Sec. 8(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit."

2 "Sec. 9(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment."

Respondent also argues that Sec. 7 [3] which gives employees the right to refrain from self organization or bargaining collectively through representatives of their own choosing would be a nullity if a committee such as the Employee-Management Committee in the instant case could not be utilized in order that the grievances and suggestions of non-union employees could be made known to their employer. This argument has logic and force but nevertheless we are bound by the words of the statute. If the means chosen by the employer to deal with his employees comes within the scope of the definition of "labor organization", there is no doubt that the domination of or interference with such organization constitutes a violation of Sec. 8 (a)(2). The Board's finding that respondent's Employee-Management Committee is within the scope of the statutory definition of "labor organization" was, in our opinion, not erroneous.

The Board in the petition before us also seeks the reinstatement, with back pay, of John C. Martins who was discharged by the respondent on October 2, 1953. The Trial Examiner found that Martins had been discharged in violation of Sec. 8(a)(3) and the Board adopted this finding and also further found that Martins' discharge had violated Sec. 8(a)(1).

Martins had been originally hired by the respondent in June, 1953 to test tuners manufactured by it at its North Dighton plant. About a month later, Martins was pro-

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3 "Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

moted to analyzer in which capacity he would attempt to discover the cause of any defects in the tuners found by the testers. It appears that not only was the position of analyzer more remunerative but it was also more interesting and demanding of skill and experience than that of tester. Toward the end of September, 1953 a production crisis occurred which caused Martins and Frank Machado, also an analyzer, to be switched from analyzing to testing. Their pay remained at the same rate but Martins and Machado were dissatisfied to act as testers and Martins complained to their foreman stating "that he could not understand why he was testing when he was getting analyzer's pay." Their foreman explained to them that the instruments they were testing were tuners which had been rejected by the respondent's most important customer who had threatened to cease purchasing from respondent, and that the regular testers could not be switched from their positions on the production line. On the morning following this complaint, Martins and Machado, who were apparently not satisfied with their foreman's explanation, especially in view of the fact that some of the regular testers had been put on production work, complained to their section's representative on the aforementioned Employee-Management Committee. This representative then gave notice of this complaint to the personnel manager, John A. Taska. Shortly thereafter Taska summoned Martins and Machado to his office to discuss their grievance. Also present at this conference were the Employee-Management Committee representative and two of respondent's foremen. The end result of this conference was the discharge of Martins by Taska who had become highly exasperated by what he called Martins' "uncooperative attitude."

The Board found that the real cause of Martins' discharge was his failure to accept as right Taska's position

that Martins' grievance was in error. The Board contends that under Sec. 7 an employee has the right "to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection" and that taking part in a grievance procedure is a protected activity. It is further contended that it is an essential element of the right to present grievances to continue to believe in the justness of the grievance even though it is denied by the employer.

However, in this case it is not necessary to determine to what extent the right to present grievances is protected by Sec. 7 for it is our conclusion that on this record there was no substantial evidence supporting the Board's finding that Martins was discharged because of his belief in the rightness of his grievance.

Machado, who impressed the Trial Examiner as the most forthright and least biased and interested of the six witnesses who testified concerning Martins' discharge and who was not discharged by the respondent, expressed substantially the same attitude concerning the rightness of his grievance as did Martins. This is brought out by Machado's testimony at the hearing set forth as follows:

> "The Witness: I told Mr. Taska I didn't think there was anything wrong with my attitude; I thought I had a good grievance and that was why I brought it up and there was some other conversation, I don't remember exactly what it was. I was told to go back to my job.
>
> "Trial Examiner Bellman: Before you went back to your job, did you at any point agree with Mr. Taska you had been wrong in bringing up the grievance, that you didn't have a grievance?
>
> "The Witness: No, I don't think I did."

It appears that Martins became sullen and resentful toward Taska during this conference and it was this attitude which caused Taska to become infuriated. Before Martins was discharged he and Machado were told to leave the office and the other parties to the conference discussed Martins' attitude and some relatively trivial incidents were brought out which tended to point out Martins' "uncooperative attitude". Each of the conferees then agreed that Martins should be discharged and he was then so informed.

On this evidence it would be reasonable to infer that Martins was discharged on rather capricious grounds and Taska's behavior was quite likely ill advised and intemperate. However, it cannot be inferred from the evidence that the motivation of Martins' discharge was Taska's resentment toward Martins' resort to the grievance procedure. It is well accepted law that an employer may discharge an employee for any reason, reasonable or unreasonable, so long as it is not for a reason prohibited by the Act. See *Gullett Gin Co.* v. *National Labor Relations Board,* 179 F. 2d 499, 501 (5 Cir. 1950), rev'd on other grounds, 340 U. S. 361 (1951). The burden is upon the Board to prove affirmatively, by substantial evidence that Martins' discharge was motivated by his pressing his rights under Sec. 7. *Indiana Metal Products Corp.* v. *National Labor Rel. Bd.,* supra.

The Board in this case has not sustained this burden and has not presented evidence justifying its finding that Martins was discharged in violation of Sec. 8(a)(3) and (1) of the Act.

The Board's order, to be modified consistent with this opinion, will be enforced.

Appendix B

DECREE

July 15, 1955

This cause came on to be heard upon a petition for enforcement of a order of the National Labor Relations Board and was argued by counsel.

Upon consideration whereof, It is ordered, adjudged and decreed that the portions of the order of the National Labor Relations Board concerning the discharge of John C. Martins be, and the same hereby are, set aside.

It is further ordered, adjudged and decreed that the Respondent, Standard Coil Products, Inc., North Dighton, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating, sponsoring, promoting, assisting, interfering with the administration of, or contributing support to the Employee-Management Committee, or any other labor organization; from initiating or forming any other labor organization; and from otherwise interfering with the representation of its employees through a labor organization of their own choosing;

(b) Recognizing the Employee-Management Committee, or any successor thereto, as the representative of any of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment.

2. Take the following affirmative action which will effectuate the policies of the Act:

Appendix B

(a) Withdraw all recognition from the Employee-Management Committee as the representative of any of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish said organization as such representative;

(b) Post at its plant in North Dighton, Massachusetts, copies of the notice attached hereto marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by a representative of the Respondent, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the First Region, in writing, within fifteen (15) days from the date of this Decree, what steps the Respondent has taken to comply herewith.

By the Court:

/s/ ROGER A. STINCHFIELD
Clerk.

A true copy:

Attest: ROGER A. STINCHFIELD
Clerk.

(Seal)

APPENDIX A

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECREE OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ENFORCING IN PART AN ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT dominate or interfere with the formation or administration of any labor organization or contribute financial support thereto.

WE WILL NOT otherwise interfere with the representation of our employees through a labor organization of their own choosing.

WE HEREBY disestablish the EMPLOYEE-MANAGEMENT COMMITTEE as the representative of any of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and we will not recognize it or any successor thereto for any of the foregoing purposes.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of any labor organization, including INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL, except to the extent that said right may be affected by an agreement in conformity with Section 8(a) (3) of the Act.

Dated .....

STANDARD COIL PRODUCTS, INC.

By .....
(Representative) (Title)

Appendix B

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

ORDER OF COURT

August 1, 1955.

Upon consideration of respondent's motion for modification of decree, memorandum in support thereof, and petitioner's answer thereto, It is ordered that the following words be, and the same hereby are stricken from the last paragraph of Appendix A attached to the decree of this Court dated July 15, 1955,: "including INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL,".

It is further ordered that the said motion for modification of decree be, and the same hereby is, in all other respects denied.

By the Court:

ROGER A. STINCHFIELD, Clerk.

By: /s/ DANA H. GALLUP
Chief Deputy Clerk.

APPENDIX C

Decision and Order of National Labor Relations Board

On June 8, 1954, Trial Examiner Earl S. Bellman, issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in the unfair labor practices alleged in the complaint, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case,[2] and hereby adopts the findings, conclusions and recommendations of the Trial Examiner.[3]

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act as amended, the National Labor Relations Board hereby

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2 The request of the Respondent for oral argument is denied because the record, exceptions and brief adequately set forth the positions of the parties.

3 In addition to being a violation of Section 8(a)(3), we find that John C. Martins' discharge also independently violated Section 8(a)(1). Whether the discharge be deemed violative of Section 8(a)(1) or (3), we find, in agreement with the Trial Examiner, that the remedy of reinstatement and back pay is appropriate and necessary to rectify the unfair labor practice.

orders that the Respondent, Standard Coil Products, Inc., North Dighton, Massachusetts, its officers, agents, successors, and assigns, shall:

1: Cease and desist from:

(a) Discouraging employees from engaging in concerted activities, or joining or assisting labor organizations, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment;

(b) Dominating, sponsoring, promoting, assisting, interfering with the administration of, or contributing support to the Employment-Management Committee, or any other labor organization; from initiating or forming any other labor organization; and from otherwise interfering with the representation of its employees through a labor organization of their own choosing:

(c) Recognizing the Employee-Management Committee, or any successor thereto, as the representative of any of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to John C. Martins immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges:

(b) Make whole John C. Martins, in the manner set forth in the section of the Intermediate Report entitled "The remedy," for any loss of pay he may have suffered because of the discrimination against him;

(c) Upon request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to an analysis of the amount of back pay and the right of reinstatement under the terms of this Order;

(d) Withdraw all recognition from the Employee-Management Committee as the representative of any of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish said organization as such representative;

(e) Post at its plant in North Dighton, Massachusetts, copies of the notice attached to the Intermediate Report marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the First Region, shall, after being duly signed by a representative of the Respondent, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced, or covered by any other material;

(f) Notify the Regional Director for the First Region, in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D.C. Oct. 20, 1954.

GUY FARMER, *Chairman*
ABE MURDOCK, *Member*
IVAR H. PETERSON, *Member*
PHILIP RAY ROGERS, *Member*
ALBERT C. BEESON, *Member*
(Seal) National Labor Relations Board.

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4 This notice is amended by striking from the last paragraph thereof the words "including International Brotherhood of Electrical Workers, *AFL.*" This notice is further amended by substituting for the words "The Recommendations of a Trial Examiner" the words "A Decision and Order." If this Order is enforced by a decree of the United States Court of Appeals, the notice shall be amended by substituting for the words, "Pursuant to a Decision and Order" in the caption, the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

APPENDIX D

No. 12280

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Petition to Enforce an Order of the National Labor Relations Board.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

ASSOCIATED MACHINES, INC.,
Respondent.

Decided January 31, 1955.

Before SIMONS, Chief Judge, ALLEN and MILLER, Circuit Judges.

SIMONS, Chief Judge. The Board seeks a decree for the enforcement of an order issued against the respondent on February 17, 1954, after proceedings under § 10(3) of the National Labor Relations Act, as amended, 61 Stat. 136. The order requires the respondent to cease and desist from dominating or interfering with the administration of Associated Machines, Inc. Committee or the formation or administration of any other labor organization, and to take certain affirmative steps to implement it.

Appendix D

The respondent challenges the petition on two main grounds, (1) that the Committee was not a labor organization, within the meaning of the Act, (2) that it neither sponsored, dominated nor supported the Committee. It also charges certain procedural errors, and, generally, that the order is not supported by substantial evidence. It also urges that the controversy has become moot by compliance with terms of the order subsequent to its issue.

The Board held that the respondent dominated and interfered with the formation and administration of the Committee in violation of § 8(a)(2) and (1) of the Act. It affirmed the intermediate report of the trial examiner who found that in April and May of 1953 there was discussion among employees of the respondent, in respect to organization by the United Steel Workers of America, C. I. O., and the International Brotherhood of Electrical Workers, A. F. of L., although there had been no open organizing campaign by either organization. On May 23, 1953, Twiss, the general manager of respondent, called a meeting of all of its employees to be held on May 26th. All employees of the three shifts except two attended. There, Twiss presided and suggested to the employees that they elect a Committee of four to represent them. He outlined their term of office and proposed that the Committee should meet with the company on the 15th and the last day of the month, for as long as this was agreeable to a majority. Grievances and working conditions were discussed and settled at the first meeting and at later meetings held in Twiss' office, on June 15, July 1, July 15 and August 20. The Committee members were compensated for their time at overtime rates. Twiss presided at all meetings, the minutes were taken by his secretary, by her transcribed, and copies given to each member of the Committee.

The trial examiner, on the basis of this evidence, found that the respondent had interfered with, sponsored and dominated, the formation and administration of the Committee, that the effect of its interference with the Committee and its continued recognition of it as a bargaining representative of its employees constituted a continuing obstacle to the free exercise by its employees of their right to self organization and to bargain collectively through representatives of their own choosing. He recommended that the respondent withdraw all recognition from the Committee for the purpose of dealing with it concerning grievances and other labor disputes and to completely disestablish it as a representative of the employees. He also recommended that the respondent cease and desist from engaging in like or related conduct or interfering with any other labor organizations of the employees' own choosing.

The respondent denies that the Committee was a labor organization, within the meaning of the Act. It points out that Twiss wanted to get together with his employees to listen to their recommendations and suggestions as to how to improve operation and, at the same time, discuss any grievances that they might have. The company was new and had no history of opposition to unions. The topics discussed at the Committee meetings consisted almost entirely of production problems, plant efficiency, new equipment, and other problems of mutual interest and the minutes of the meetings indicate that there were few, if any, topics discussed that were either grievances or subject to collective bargaining, that it was never understood by either employer or the Committee that its function was the discussion of wages, and neither regarded the Committee as a labor organization or union. No financial aid was given or offered by the company to or accepted by the Committee. No dues were collected

from the employees and no collective bargaining agreement entered into.

The testimony of Twiss, explaining the purpose of the organization, was to the effect that he had told the employees that as they were not represented they should elect a Committee to represent them, so that he could listen to their recommendations and suggestions as to how to improve operations, and, at the same time, discuss any grievances that they might have, that they should feel free, at any time, to stop him in the plant and discuss anything with him that they might have on their minds. His testimony as to the purpose of the organization was corroborated by a number of members of the Committee and is nowhere disputed in the record.

The trial examiner found that there was no merit to the contention that the Committee was not a labor organization. He based his decision solely upon the definition contained in § 2(5) of the Act, 61 Stat. 136, and upon the observation of Twiss that the meetings might consider grievances. The cited section reads: "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." We consider also, in this connection, the proviso in § 8(a)(2) which reads: "Provided, that subject to rules and regulations made and published by the Board, pursuant to § 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay" and also the first proviso of § 9(a) which reads: "that any individual employee or group of employees shall have the right at any time to present griev-

ances to their employer and to have such grievances adjusted without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect:"

This leads us to a consideration of the meaning of the term "grievances" in § 2(5) together with the gloss put upon such term by the proviso in § 9(a). In *Hughes Tool Company* v. *N. L. R. B.*, 147 F. 2d 69, Judge Sibley reasoned, in considering the Wagner Act, 29 USCA §§ 151 et seq., that " . . . it is plain that collective bargaining, in respect to rates of pay, wages, hours of employment and other conditions of employment which will fix for the future the rules of the employment for everyone in the unit is distinguished from 'grievances' which are usually the claims of individuals or small groups that their rights under the collective bargain have not been respected." See Note to the *Hughes* case in 158 ALR, 1174.

Construing the Railway Labor Act of 1934, in *Elgin J & E Railway Company* v. *Burley*, 325 U. S. 711, at 722, the Supreme Court pointed out the distinction between requirements for the prompt and orderly settlement of disputes concerning rates of pay, rules or working conditions and those growing out of grievances. "The first relates to disputes over the formation of collective agreements or efforts to secure them, . . . they look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past." "In general, the difference is between what are regarded traditionally as the major and the minor disputes of the railway labor world. The former present the large issues about which strikes ordinarily arise with the consequent interruptions of traffic the Act sought to avoid. Because they more often involve those consequences and because they seek to create rather

than to enforce contractual rights, they have been left for settlement entirely to the processes of noncompulsory adjustment. The so-called minor disputes, on the other hand, involving grievances, affect the smaller differences which inevitably appear in the carrying out of major agreements and policies, or arise incidentally in the course of an employment. They represent specific maladjustments of a detailed or individual quality. They seldom produce strikes though, in exaggerated instances, they may do so. Because of their comparatively minor character and the general improbability of their causing interruption of peaceful relation and of traffic, the 1934 Act sets them apart from the major disputes and provides for very different treatment."

In the popular concept of the term "grievances," it may perhaps be considered to refer to all complaints by an employee against his employer and so includes most of the objectives of collective bargaining. It would seem, however, that in labor legislation it has, to some extent, acquired a limited meaning as a term of art, and, doubtless, Mr. Justice Rutledge in the *Elgin* case had in mind the basic concept upon which the constitutionality of the Wagner Act was adjudicated in *N. L. R. B.* v. *Jones & Laughlin*, 301 U. S. 1, and companion cases, namely, the effect of strikes upon interstate commerce. It becomes necessary, therefore, to consider in what sense the term "grievances" is used in § 2(5) of the Act. It would seem to be clear from its association with "labor disputes, wages, rates of pay, hours of employment or conditions of work" that it refers to major disputes in the labor field, to collective rather than individual or group complaints, and to chart the future of the employer-employee relationship rather than to correct the past or existing status of that relationship. So, the maxim *Ejusdem Generis* and the

broader rule of *Noscitur A Socus* bids us compare the meaning of "grievances" in the declared and uncontradicted purpose of the appellant in the formation of the Committee. There, is found no association of the term with the major objectives of labor organizations in collective bargaining. It travels in different company.

This view is supported by use of the term "grievances" in the § 9(a) Proviso and by the statement of Representative Hartley in House Conference Report No. 510 on H. R. 3020, 80th Congress, 1st Session, p. 45, wherein he stated: "Section 8(a)(3) of the Amended Labor Act in the House bill provided that nothing in the Act was to be construed as prohibiting an employer from forming or maintaining a Committee of employees and discussing with it matters of mutual interest, if the employees did not have a bargaining representative. This provision is omitted from the conference agreement since the Act, by its terms, permits individual employees, and groups of employees, to meet with the employer, and § 9(a) of the conference agreement permits employers to answer their grievances."

The view we take of the term "grievances" in this discussion is consistent with that developed in *Hoover Motor Express Company, Inc.* v. *Teamsters, et al.*, decided by us on November 23, 1954. *N. L. R. B.* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 269, is not contra since the company union there formed was organized for the purpose of "securing for them (employees) satisfactory adjustment of all controversial matters" even though it functioned mainly to settle individual grievances. In *N. L. R. B.* v. *General Shoe Corporation*, 192 F. 2d 504, the advisory Committee of employees considered wages, rates of pay, hours of employment and conditions of work, and in *N. L. R. B.* v. *Sharples Chemicals*, 209 F. 2d 645, there was substantially equal breadth of purpose.

In the present case, such discussion as was had relating to working conditions involved individual rather than collective complaints and the request of the Committee for a parking lot, not available on company property, involved no aspect of "working conditions."

It is our conclusion that the Associated Machines, Inc. Committee is not a labor organization, within the meaning of the Act. It, therefore, becomes unnecessary to discuss or rule upon other issues, although it may be appropriate to say that the controversy did not become moot by the post-decision disestablishment of the Committee by the appellant, *N. L. R. B.* v. *Mexia Textile Mills, Inc.*, 339 U. S. 563, *N. L. R. B.* v. *Pool Mfg. Co.*, 339 U. S. 577, *N. L. R B.* v. *Toledo Desk & Fixture Co.*, 158 F. 2d 462 (C. A. 6).

Enforcement denied.

Judge Miller is of the opinion that the order should be enforced. Sec. 152(5), Title 29, U. S. Code; *N. L. R. B.* v. *General Shoe Corp.*, 192 F. 2d 504; *N. L. R. B.* v. *Sharples*, 209 F. 2d 645.

APPENDIX E

RECORD, pp. 52a-57a

SUBJECT: Employee-Management Committee Meeting
September 11, 1953 at 2:30 P.M.

On Wednesday, September 9, 1953, the employees elected the following individuals as their representatives on the Employer-Management Committee:

Mildred Hutchinson	—Line #1
William Rossini	—Line #2
Manuel Arruda	—Line #3
Hilda Dagenais	—Coil Adjusting
Blanch Vargas	—Sub-Assembly
Mary Cabral	—Maintenance, Stores and Machine Shop (back room)

The above-mentioned Representatives and the writer met for the first time on September 11, 1953 at 2:30 P.M. The meeting opened with the necessary introductions and then proceeded to discussing the functions of this Committee.

Reference was made to the letter of September 3, 1953 in which it was stated that the basic objective of this Committee should be the creation of a team that, in its joint efforts, would be of benefit to all concerned.

With such an objective in mind it would probably be best if this Committee, in its initial efforts, would concentrate on the establishment of a free flow of information; from the employees to management and also in the opposite direction. This being especially true in our case due to the newness of the operation and the fact that our oldest production employees had at most 2½ months seniority. Through the free flow of factual information the trouble makers, ignorance, rumor and hearsay, would not have any opportunity to spread their deadly venom.

These meetings would be held at least once per month, more frequently whenever necessary. In the periods between such meetings any Representative who encountered an employee problem, question or gripe, should feel free to visit the Personnel Manager. Immediate attention would be given to such situations. The situation would be factually investigated and answers obtained as promptly as possible.

It was also mentioned that the Employee Representatives would have to give some thought to the perpetuation of the Committee and providing for periodic elections to this Committee. It was suggested that one method could be staggered elections for the various Sections so that the Committee at all times would have a neucleous of members with committee experience. The Employee Representatives were receptive to this thought.

The following subjects were then introduced by various members of the Committee:

Smoking While in Line to Punch Out

Employees have been complaining about other employees carrying lighted cigarettes while waiting in line to punch out. There had been instances of burns, burned clothing, etc. Many employees were immediately lighting up as soon as the final bell rang causing the above situation.

It was decided that for the benefit of all concerned smoking would be prohibited while waiting in line to punch out. Bulletins would be prepared and Supervisors informed that such practice was tabu.

Waiting Time Involved In Punching Out

Some employees have been critical of the amount of time required to clear the last employee out at night. A suggestion was made to put another clock in the back. An-

other representative felt that as the cold weather arrived and more coats were worn, the location of the coat racks would create additional confusion around the clocks.

It was pointed out that on the average it took four minutes for all employees to clear the clocks. This was not very long in fact probably less than in most other places employing a similar number. To put another clock in the back had some problems involved one being the necessity of keeping the time cards in two places. Nevertheless, this was a subject which might benefit by a careful analysis which would be done as soon as possible and the results presented to the full Committee.

CAFETERIA

Employees were looking forward to the opening of the cafeteria. They were wondering when this would be accomplished and felt that perhaps management was slighting this problem.

The Committee was told that this was a typical case in which the lack of facts permitted rumor and hearsay to gain a foothold. When the plant was taken over it was believed that the cafeteria needed only to be cleaned in order to get it into operation. However, such is not the case. First, we need steam. At the present time the boilers are shut down and therefore steam is not available. If the boilers were started just for the cafeteria we had been advised it would cost $2,000 per week for oil. Therefore, it was necessary to wait until the heating season arrived. In addition some of the equipment in the cafeteria operated with D.C. motors and others with A.C. D.C. not being available such motors would have to be replaced with A.C. motors. This was being done and as an illustration of the cost involved it was mentioned that the revising of one panel would probably cost $300.00.

When next summer arrived the question of steam during such period would be solved by the installation of special equipment.

While on the subject of food it was pointed out that the Company policies was to provide good food as cheaply as possible. A Company of three young men had been engaged to operate the cafeteria. They would be provided with the facilities and all necessary utilities free of charge. This would reduce their operating expenses and they would be expected in return to serve at reasonable prices. It was also mentioned that the usual commission from the vending machines had been turned back to these same gentlemen who were also presently providing the sandwiches. In turn, they have reduced the price of all their sandwiches five cents each.

CONDUCT—ONE EMPLOYEE TO ANOTHER

A Representative mentioned that she had just the other day overheard and seen a situation where a male employee had used abusive language to a woman. This caused the woman to break down and cry.

She said that she had spoken to the man concerning this and he had apologized to the girl. She wanted to know if that was a proper thing for her to do.

It was stated that this Company believed that each person was expected to treat fellow employees with the same consideration and respect that they in turn would expect. In fact, this even applied to the relationship between supervisor and employee.

However, before any Representative became too deeply involved and then charged with taking sides with anyone or a group of employees it would be best to first talk with the Personnel Manager. That way it would not only prevent the above possibilities but also a cooling off period

worked wonders and followed up by the Personnel Manager would correct the situation.

UNION

One Representative asked the question if Management was in favor of or against the Union. Management replied that they were attempting to run a plant where people would like to work. Wage rates, benefits and working conditions had been established not from the standpoint of how cheaply this could be done but rather from the consideration of how much could we do. This we believe has resulted in a set up which in many ways is considerably better than others in the vicinity. This would still be the policy followed irrespective of the presence of a Union. What in addition could be done in the future depended in large part on how well our employees co-operated. We were in a competitive market and the final boss was still our customer. If we could produce a quality tuner at prices which permitted us to meet competition, pay out bills and still have something left over for the owners of the Company, the future held a lot of promise not only for our employees but for the surrounding communities. One Representative then mentioned that all a union was interested in would be the dues which in our case would be a nice take. Another mentioned most employees were not interested in a union. Another pointed to Mt. Hope Finishing Co. as an illustration of what a union could do for you. Another didn't see how a union could improve the working conditions at the plant.

LEAD GIRL ON LINE #1

The Representative from Line #1 mentioned that the lead girl, Kay Chamberlain, on Line #1 each day came up

with exactly the same number of parts placed on the line. This was accomplished by not following the light but by insertions out of sequence. She had been told by the Supervisor on the line not to do this but continued the practice when they were not around.

The Employee Representatives were told that Management expected the lead girl to follow the light. This situation would be investigated and corrected.

Promotions and Bulletins

A question concerning the procedure followed when employees signed up for promotional positions when bulletinized was asked and the procedure explained.

Relief Operator on Line #1

One Representative pointed out that the girls at the end of Line #1 were giving the Relief Operator in their section the business. For instance they decided before hand in what sequence they would ask to be relieved and as soon as one came back another would leave. It was stated this situation would be investigated and corrected.

Identification for Employee Representatives

The Representatives were asked how they felt concerning the use of some sort of visible identification for themselves. They all seemed to feel it was a good idea due to the many new faces arriving each day. It was decided to investigate what could be obtained for this purpose.

Curtain on Line #3

The Representatives were informed of the curtain that had been placed under Line #3. This had been done as an experiment due to some girls feeling they could not

get comfortable with the boys in the Lab. Section facing them. The Representative of this section was asked to find out what the girls thought of the idea.

A number of the Representatives expressed a desire to meet Mr. Andrews and Mr. Olszowka. Both came into the meeting and Mr. Andrews was asked a number of questions concerning his thoughts on some of the questions previously discussed. In answering these questions, Mr. Andrews brought out the basic beliefs and intentions of the Company.

Mr. Olszowka also addressed the Committee for a few moments and stressed his belief that no matter how trivial or simple or for that matter how silly a question any employee might bring up it was important in his opinion that this question be treated with respect and be answered as quickly as possible.

The meeting adjourned at 4:30 P. M.

APPENDIX F

APPENDIX TO PETITIONER'S BRIEF IN *N. L. R. B.* v. *Associated Machines, Inc.*, 219 F. 2d 433 (6th Cir. 1955), pp. 22a-29a.

MINUTES OF ASSOCIATED MACHINES COMMITTEE MEETING OF JUNE 15, 1953

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A time clock or buzzer system for Plants 2 and 3 was discussed. It was thought that Luke had one on order. This is for a master clock similar to the one at R-B-M to ring the buzzer but it has been held up for further investigation.

It was mentioned by [an employee representative] that we have a parking problem and he wondered if they might use part of the A & P parking lot. [Employer representative] stated that the A & P had a lease on the building and that we would not be able to use the parking lot.

[Employee representative] mentioned that a light was needed in the office room where some of the parts are stored because at night you can't tell the parts from the pods. [Employer representative] said he would take care of this.

[Employer representative] asked . . . if anyone at Plant 3 had any grievances. Friesner stated that everything was satisfactory at Plant 3.

[Employer representative] stated that they were investigating and would purchase more exhaust fans for Plant 2. One would be installed in the time clock room and one over the cast master. These fans will give some relief this summer.

There were no complaints on housekeeping. It was reported that everything was satisfactory and that they now have hot water.

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Appendix F

MINUTES OF ASSOCIATED MACHINES COMMITTEE MEETING
JULY 1, 1953

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The time clock is all set up and the wiring is in. All they have to do now is hook the clock up. There will be no warning bell hooked up on this clock. It will be for starting and quitting time only.

The light has been installed in the northwest room of Plant 2 where the men were having difficulty telling the parts from the pods at night.

Have two exhaust fans ready to put in and they should be installed by next week. We are ordering two more fans for immediate delivery.

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[Employee representative] stated that everything was okay down at Plant 3. [Employer representative] said that the efficiency of the screw machines is coming up gradually and that we are doing pretty good considering that it is a new job. We do have a lot of down time now but that should lessen with experience.

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[Employee representative] advised that the pop machine was not working again down at Plant 3. The machine was checked about a week ago and fixed but something is wrong again because the pop is warm. [Employer representative] called Mr. Skidmore and he is to get in touch with the company.

Frank Jones stated that there were no complaints from plastics.

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Appendix F

ASSOCIATED MACHINES COMMITTEE MEETING JULY 15, 1953

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The time clocks at Plants 2 and 3 are now hooked up and are working.

The exhaust fans are in and are being prepared for installation. Have one more to clean up before they will be installed.

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They are still having trouble down at Plant 3 with the coke machine. The machine goes empty too fast. They do not fill the machine. Leave it up to the men to fill it. Only holds about 23 cokes. The pop is still warm. Mr. Skidmore is to check to see if they can get a bigger machine down at Plant 3.

[Employee representative] stated that they need some electric clocks. They would like to have 2 or 3. The fellows going on their off time on the die cast machines don't know when to go back. Sometimes they go over. They get 10 minutes every hour on the die cast machines. Should put a clock up by the fan over plastics and one in the screw machines. [Employer representative] was to contact Mr. Douglass about this.

Some of the fellows asked about getting a cigarette machine installed down at Plant 3. Mr. Twiss stated that they have to be guaranteed so much. Mr. Skidmore is to check this.

[Employee representative] stated that they need a place for welding. Too much gasoline around. Need a shield or something when they are welding. Shouldn't have inflammable material around this area.

Some of the fellows wanted to know if they will be getting any overtime. They are now working regular tricks,

5 days a week. [Employer representative] stated that the only way we can get any overtime is on the Stokes. We received a call asking for relief from one of the other plants. We can take some of the work for the 800 and 741. If that doesn't give them enough relief we may have to take over some more to give them more relief. That is the only way we would get any overtime. Other than that the only thing that would result in overtime would be an increase in schedules. As soon as I get information and find out how we stand will let you know.

They want a light down on the table where they sort the parts. Said the light was too far away to sort parts. Needs to be lowered. [Employer representative] said he would check this.

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ASSOCIATED MACHINES COMMITTEE MEETING
AUGUST 20, 1953

Asked if there were any grievances from either plant.

[Employee representative] asked about the cigarette machine for Plant 3. Mr. Skidmore was on vacation so we were unable to check. Told them we would take care of it and have Edna call the vendors to see if they could put a machine in.

Frank Jones had previously asked about overtime and [Employer representative] stated that they would now be working 6 days a week instead of 5.

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Frank Jones stated that they have 16 presses running. Will have to take a good look at schedules. We had previously stated that we would have additional capacity to

take on work for other plans but we won't do this if we can fill our presses up to work for six days.

[Employee representative] stated that everything was okay down at Plant 3 and that there were no complaints.

[Employer representative] stated that 90 percent of the grievances that are received are justified. They usually have a reason when they complain. The time to take care of them is now when they happen and not later.

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